



सत्यमेव जयते



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA
BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No. 295/PAN/2024

Assessment Year : 2014-15

BARDC Bank Bhatkal
Next to BSNL Tower,
Bhatkal, Uttara Kannada.
PAN:AAAAP1731G

..... Appellant

V/s

National Faceless eAsstt. Centre,
Delhi.

..... Respondent

Appearances

Assessee by : Mr Ravish Rao ['Ld. AR']

Revenue by : Ms Rijjula Uniyal ['Ld. DR']

Date of conclusive Hearing : 13/08/2025

Date of Pronouncement : 14/08/2025

ORDER

PER G. D. PADMAHSHALI, AM;

Instant appeal is filed by the assessee against the DIN & Order No. ITBA/NFAC/S/250/2023-24/1070120969(1) dt. 05/11/2024 passed u/s 250 of the Income-tax Act, 1961 [for short 'the Act'] by the National Faceless Appeal Centre, Delhi [for short 'NFAC'] which in turn has ascended out of order of assessment passed u/s 147 r.w.s. 144 r.w.s. 144B of the Act by the National Faceless e-Asstt. Centre, Delhi [for short 'AO'] in relation to assessment year 2014-15 [for short 'AY']



2. Briefly stated facts of the case are that; the assessee is a primary co-operative agricultural and rural development bank with the main objective of providing credit facilities to its members. The assessee filed its return of income for the year under consideration on 03/11/2014 declaring an income of ₹Nil after claiming deduction u/s 80P of the Act of ₹1,84,26,859/-. The said return was initially processed u/s 143(1) of the Act on 22/01/2015 and subsequent selected for scrutiny & consequential assessment was completed u/s 143(3) of the Act assessing total income at ₹27,536/- after allowing deduction u/s 80P of the Act for sum of ₹1,83,99,323/-. In view of the decision in the case of *'Citizen Co-op. Society Vs ACIT'* [2017, 397 ITR 1 (SC)], the case of the assessee after recording reasons and obtaining prior approval from competent authority reopened by issue of notice u/s 148 of the Act dt 27/02/2020. When the assessee failed to explain effectively as to why profit attributable to loans extended to non-members should not be taxed as income from other sources. In the event of no reply, the AO considering the information available on record invoked the provisions of Section 144 of the Act and framed the assessment u/s 147 r.w.s 144 r.w.s 144B of the Act whereby Ld. AO denied the claim of deduction u/s 80P of the Act and thus assessed the total income of ₹1,84,26,8597 /-.



3. Aggrieved assessee approached the Ld. NFAC. In the first appellate proceedings, the Ld. NFAC issued five notices dt. 16/03/2023, 06/10/2023, 15/02/2024, 23/08/2024 & 21/10/2024 to the assessee through ITBA portal to which there was no compliance by the assessee. In the event of assessee's failure to respond to such notices, the Ld. NFAC proceeded ex-parte on the basis of material available on record and countenanced the action of Ld. AO thus confirmed 80P(2) denial. Further aggrieved, the assessee came in present appeal before the Tribunal.

4. Without touching merits & grounds, we noted that, the appeal against assessment order was filed during the subsistence of COVID-19 Pandemic and in the course of such first appellate proceedings the Ld. NFAC issued five notices one after another mostly according less than fifteen minimum/reasonable days to respond. In the event of failure on the part of appellant to respond former notices, the appeal was dismissed by the Ld. NFAC *ex-parte* but in the absence assessee. The records placed before us apparently capable of suggesting that, post pandemic when appellate proceedings were resumed, these former notices of hearing were meant to accord no real opportunity to the appellant but to create an audit trail to showcase adherence to natural justice.



5. It shall be worthy to underline that the opportunity of being heard should be real, reasonable and effective and same should not be empty or paper formalities, it should not be a paper opportunity. In this context of reasonable period/opportunity, the Hon'ble High court of Patna judgement in '*St. Paul's Anglo Indian Education Society*' [2003, 262 ITR 377 (Pat)]' has categorically held that, an adjudication is unjustified if an assessee was deprived of reasonable opportunity and reasonable time to produce all relevant documents to substantiate claims made in the return of income. Placing reliance on the same, the impugned order in our considered view deserves to be set-aside for *de-novo* adjudication after providing opportunity for effective representation to the appellant assessee.

6. Furthermore, during the course of present second appellate proceedings, the appellant assessee raised an additional legal ground challenging the very assumption of reassessment jurisdiction for issuance of notice u/s 148 of the Act. This legal ground raised by the appellant is admittedly ascended out of the impugned order and goes to challenge validity thereof. Undeniably no new facts are required to be investigated or verified for the purpose, therefore such being a bald legal ground deserves admission in the light of ratio laid down by the Hon'ble Apex Court in '*CIT Vs National Thermal Power*



Company Ltd.’ reported in 229 ITR 383 (SC), and Hon’ble Delhi High Court in ‘Gedore Tools Pvt Ltd. Vs CIT’ reported in 238 ITR 268. After due consideration of appellant’s plea and submission, we are satisfied that, omission to raise legal ground while filing present appeal was neither wilful nor unreasonable, for the reason we deem it fit to admit in the light of judicial precedents laid in ‘Jaora Sugar Mills Pvt. Ltd v CIT’ reported in 124 ITR 482 (MP), and ‘CIT v Western Rolling Mills Pvt. Ltd.’ reported at 156 ITR 54 (Bom) and ‘Jute Corporation of India Ltd. v CIT’ find placed in 187 ITR 688(SC) and ‘Ahmedabad Electricity Co. Ltd. v CIT’ reported in 199 ITR 351(Bom), ergo same stands admitted. However Ld. DR evoked our concurrence to the fact that, since said legal ground not passed through the first appellate proceedings, therefore same also needs to remanded back for its adjudication to the Ld. NFAC along with other issues.

7. The issue of Tribunal’s power to adjudicate the ground raised before it in second appeal which did not pass through first appeal came for consideration before the Hon’ble Delhi High Court in the case of ‘Divine Infracon Pvt. Ltd. Vs PCIT’ [2025, 171 taxmann.com 92 (Del)], wherein their Hon’ble Lordship vide para 13 have categorically held that, the Tribunal has no jurisdiction to proceed to decide the ground which did not arise from the impugned order



passed by first appellate authority, irrespective of such ground was raised in first appeal or not.

8. In summation, on one hand the appellant was deprived of reasonable opportunity and reasonable time to produce all relevant documents/evidence in support of grounds of appeal raised, and on the other hand the legal ground raised in the present proceedings first time did not pass through the first appellate stage. For the stated twin reasons, we deem it fit to set-aside the impugned order for its remand to the file of Ld. NFAC at the stage of its institution with a direction to admit the former legal ground and adjudicate the same along-with all other grounds raised in Form No 35 *de-novo* in accordance with law and pass a speaking order in terms of s/s (6) of section 250 of the Act, ergo ordered accordingly. The grounds are thus stands partly allowed for statistical purposes.

9. **In result, the appeal is allowed for statistical purposes.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on the date mentioned hereinbefore.

-S/d-

**PAVAN KUMAR GADALE
JUDICIAL MEMBER**

Panaji/Dt.: 14th August, 2025

Copy of the Order forwarded to :

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|-------------------|--------------------------------|------------------------------|
| 1. The Appellant. | 2. The Respondent. | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Goa | 6. Guard File |

-S/d-

**G. D. PADMAHSHALI
ACCOUNTANT MEMBER**

By Order,
Sr. Private Secretary / AR ITAT, Panaji.